Supreme Court U.S.
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IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1980

No. 79-1799

BERNARD LAUFGAS, Petitioner

v.

THE STATE OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

Bernard Laufgas
PO Box 98
Barnegat, New Jersey 08005
Pro Se

Dated: April 28, 1980

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UNITED STATES
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Petitioner, Bernard Laufgas, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Superior Court of New Jersey, Appellate Division, entered in this proceeding on October 22, 1979.

Opinion Below

The opinion of the Appellate Division, not reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the Appellate Division was entered on October 22, 1979. A timely Petition for Certification in the Supreme Court of New Jersey was denied on February 11, 1980, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is involved under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

I. Does the due process clause of the Fourteenth Amendment to the United States Constitution require a public college to provide a hearing to a former student prior to permanently excluding that former student from college grounds where the college's facilities are generally open to the public at large for a variety of functions?

II. Was the letter constituting the foundation of the trespass released in violation of 20 U.S.C. § 1232 (b)(2)(B)?

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISION INVOLVED

United States Code, Title 20: § 1232g(b)(2)(B)

"(b)(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing or providing access to any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless. . .

"(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency."

The letter was issued unilaterally by Dean Kerr. There was no hearing nor has one ever been granted even though Petitioner has repeatedly requested such a hearing on this matter.

STATEMENT OF THE CASE

On February 3, 1978, Kenneth Kerr, the Dean of Students of Ocean County College, wrote a letter to Petitioner, Bernard Laufgas. The letter banned Petitioner from the campus on a permanent basis. The letter also warned Petitioner that he would be considered a trespasser if he were to come on the campus without permission. The letter was issued unilaterally by Dean Kerr: there was no hearing nor has one ever been granted even though Petitioner has repeatedly requested such a hearing on this matter. On February 9, 1978, Petitioner, without prior permission, entered upon the campus and entered Dean Kerr's office. As a result of Petitioner entering the campus and his subsequent conduct while in the Dean's office, a three count Complaint was filed against him in Dover Township Municipal Court. The three counts were as follows: trespassing on the campus of Ocean County College after having received the letter banning the Petitioner from the campus, contrary to the provisions of N.J.S.A. 2A:170-31 (count one); entering the Dean's office to annoy and molest him, contrary to the provisions of N.J.S.A. 2A:170-29(2)(b) (count two);

and assaulting the Dean by pointing a finger in the Dean's fact, contrary to the provisions of N.J.S.A. 2A:170-26 (count three).

On April 19, 1978, the Petitioner appeared before the Honorable Francis X. Halligan in Dover Township Municipal Court, and entered pleas of not guilty to all three counts. Petitioner was found guilty of all three counts. Petitioner was sentenced as follows: $50 fine plus $15 costs on each count; seven days in the Ocean County Jail on each count, jail time suspended; and two years non-supervised probation.

On April 25, 1978, defendant filed a Notice of Appeal and Affidavit of Indigency with the Ocean County Court.

On June 23, 1978, a plenary trial de novo on the record was held before the Honorable Mark Addison, Judge of the County Court. Judge Addison reversed Petitioner's conviction on the charge of assault (N.J.S.A. 2A:170-26), and affirmed his convictions on the charges of trespass (N.J.S.A. 2A:170-31) and offensive language (N.J.S.A. 2A:170-29(2)(b)). Defendant was sentenced to pay a fine of $50 plus $15 costs for each violation.

The Petitioner subsequently filed his Notice of Appeal to the Appellate Division of the New Jersey Superior Court. On October 22, 1979, the Appellate Division filed a per curiam opinion affirming the conviction for trespassing and found that the Petitioner was not properly convicted of molesting and interferring in violation of N.J.S.A. 2A:170-29(2)(b).

The Appellate Division rejected Petitioner's claim arising under the due process clause of the Fourteenth Amendment to the United States Constitution. It also rejected his claim arising under 20 U.S.C. § 1232g(b)(2)(B).

A timely petition for certification was filed with the New Jersey Supreme Court. The petition for certification was denied on February 11, 1980.

REASONS FOR GRANTING THE WRIT

I. The due process clause of the Fourteenth Amendment to the United States Constitution requires a public college to provide a hearing to a former student prior to permanently excluding that former student from college grounds where the college's facilities are generally open to the public at large for a variety of functions.

Ocean County College is a public educational institution funded by the State of New Jersey. One of college's purposes is to serve and meet the needs of the local community. Various community functions are held on the Ocean County College campus. When a college opens its resources to the general public, even a non-student cannot be denied access to these resources without due process of law under the Fourteenth Amendment to the United States Constitution. Watson vs. Board of Regents of University of Colorado, 512 P.2d 1162, 1165; 182 Colo. 307, 313 (1973.

Students receiving disciplinary action from college officials do possess procedural due process rights. Courts have determined that these rights include adequate

notice of the charges, the chance to prepare to meet the charges, and a fair and impartial hearing. Buttny vs. Smiley, 281 F. Supp. 280 (D. Colo. 1968). These same procedural due process requirements must be given to non-students before they may be permanently denied access to a college's facilities. Dunkel vs. Elkins, 325 F. Supp. 1235 (D. Md. 1971). There is simply no logic in denying these recognized rights to a former student, since they apply to students and non-students alike.

Petitioner has never been accorded his procedural due process rights. The letter constituting the basis of Petitioner's trespass was issued by the Dean of Students without any hearing whatsoever. Petitioner has made numerous requests for a hearing, yet no hearing has ever been granted. The denial of Petitioner's due process rights is obvious.

II. The letter constituting the foundation of the trespass was released in violation of 20 U.S.C. § 1232g (b)(2)(B).

Before educational records may be furnished to a Court, two requirements must be met: the information must be requested by a judicial order, and the student must be

notified of the order before compliance is made. 20 U.S.C. § 1232g(b)(2)(B).

The letter constituting the foundation of the trespass was part of Petitioner's educational records. There was never any court order requesting the release of Petitioner's educational records, Dean Kerr simply brought a copy of the letter to the trial. This copy was later admitted as evidence that a trespass had occurred. However, its release by Dean Kerr was in violation of § 1232g(b)(2)(B) since there was never a judicial order requesting it. Petitioner was never notified that the letter would be released. Therefore, Dean Kerr violated § 1232g(b)(2)(B).

CONCLUSION

For the reasons noted above, a Writ of Certiorari should issue to the judgment and opinion of the Appellate Division.

Respectfully submitted,

BERNARD LAUFGAS, Pro Se

Appendix 1

Ocean County Court
Criminal Division
Appeal No. 81-77

State of New Jersey :
:
vs. :
: JUDGMENT OF CONVICTION
Bernard Laufgas :
:
Defendant :

The defendant having appealed a conviction entered by the Municipal Court of the Township of Dover, on April 19, 1978, and this Court having conducted a plenary trial de novo on the record, and this Court having rendered a judgment of guilty on the charge of violation 2A:170-31 (TRESPASS) and 2a:170-29.2b (OFFENSIVE LANGUAGE)

It is on this 23rd day of June, 1978, ORDERED AND ADJUDGED that the defendant be and is sentenced to pay a fine of $50. plus $15. costs for each violation. (Total $100. plus $30.) Partial payment of $100. previously paid to the Municipal Court. Balance of $30. to be paid to the Ocean County Sheriff within 30 days.

Court found the deft. NOT GUILTY of violation

2A:170-26 (A & B)

Attorney for Defendant

/s/ Frank A. Buczynski, Jr., Esq.

/s/ E. Kenneth Burdge,
E. KENNETH BURDGE, County Clerk

/s/ Mark Addison
JUDGE
HON. MARK ADDISON, J.C.C.

DATE: June 26, 1978

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1404-78

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BERNARD LAUFGAS,

Defendant-Appellant.

Argued October 9, 1979 Decided Oct. 22, 1979

Before Judges Seidman and Michels.

On appeal from the Ocean County Court.

Mr. Bernard Laufgas, appellant, argued the cause pro se.

Mr. Vincent J. Grasso, Assistant Prosecutor, argued the cause for respondent (Mr. Edward J. Turnbach, Ocean County Prosecutor, attorney; Mr. Douglas C. King, Assistant Prosecutor, of counsel, Mr. Robert W. Scott, Assistant Prosecutor, on the brief).

PER CURIAM.

On the complaint of Dr. Kenneth Kerr, Dean of Students at Ocean County College, defendant was charged with being a disorderly person in violation of N.J.S.A. 2A:170-31, N.J.S.A. 2A:170-29(2)(b) and N.J.S.A. 2A:170-26. The specific acts with which defendant was charged in the

complaint were: (1) trespassing on the campus of Ocean County College after having been forbidden to do so, (2) entering Dean Kerr's office to annoy and molest him and (3) assaulting Dean Kerr by "repeatedly point (ing) his finger into the face of the Complainant." Defendant was found guilty in the Municipal Court of the Township of Dover on all three charges and was fined $50 for each conviction, plus costs. Defendant also was given a suspended seven days sentence on each conviction and placed on unsupervised probation for two years on the condition that he not enter the college grounds or campus or interfere in any way with the students or faculty thereon. Defendant appealed to the Ocean County Court, where after a trial de novo on the record below, he was acquitted of the assault and found guilty of trespass and "offensive language." The county court judge acquitted defendant of assault concluding that "shaking his fingers in the face of someone else during the course of an argument . . . does not constitute assault." Defendant again was fined $50 plus costs for each conviction, and this pro se appeal followed.

According to the State's proofs, defendant, a student at the Ocean County College had complained to

Dean Kerr sometime in September 1977 about the college's lack of attention to and support of the cross country team and was critical of Dean Kerr's handling of the problem. This and other complaints continued during the semester with defendant making demands of the college and having confrontations with students and college staff. Reports were received of defendant's threatening and abusive manner and conduct and in November 1977 defendant was placed on probation for disrupting a college recruiting function. Defendant left Ocean County College. Notwithstanding the fact that defendant was no longer a student at the college, he returned to the campus the following semester and threatened a student. As a result, Dean Kerr wrote to defendant on February 3, 1978 and banned him from the campus and warned him that he would be considered a trespasser if he came upon the campus without permission. Dean Kerr's letter explicitly provided:

> This will serve as official notice that your presence is hereby prohibited form the campus of O.C.C. unless prior approval is received from this office. Such action is necessitated because of your repeated threats of physical harm directed toward a student, the latest occurring on Thursday, February 2, 1978, which was witnessed by several others.
>
> Such behavior can only be considered disruptive

to the safety and well-being of students, and disruption of an on-going co-curricular activity.

Since you are no longer a student, if there is any legitimate reason for your presence on campus, it will be necessary for you to receive permission from the Dean of Students or the Assistant Dean of Students after first setting forth the specific time involved and the specific nature of your visit. Without such permission, you will be considered trespassing and the college security force has been instructed to escort you from the campus.

On February 7, 1978 defendant, without prior permission, entered upon the college campus, charged into Dean Kerr's office, screaming and berating him for having sent the letter and using foul and obscene language. Defendant's conduct is explicitly described by Dean Kerr as follows:

A. I got to work about 8:00 o'clock was working on my - at my desk for the first hour. The door was almost completely closed, although I don't think it was shut completely. It was closed, but not - the latch wasn't holding, and Mr. Laufgas came literally charging into my office, screaming, and stood approximately two or three inches away from where I was seated, and just started to berate me and scream and holler.

Q. And what was he saying?

A. Well, he was initially obviously upset about the letter which I had sent him banning him from the campus, and that was the basis for his concern and he just ran for about five to ten minutes.

Q. Did he direct obscenities at you?

A. Yes, he did.

Q. Do you recall what these obscenities were?

A. Yes -

Q. Will you tell us, please, what they were, what he said?

* * * *

A. "You bastard, you Mother f---er, how dare you ban me for the campus, I'll bash your teeth in-" and just repeated, "You Mother f---ing bald headed bastard, I'll bash your teeth in. You have no right to deal with me this way. Why did you send me the letter," again, and again and again, just constant. And "You God damned son-of-a-bitch bastard," you know - on and on.

Defendant seeks a reversal of his convictions for trespass and "offensive language" on the following grounds set forth in his pro se brief:

POINT I OCEAN COUNTY COLLEGE IS A PUBLIC INSTITUTION OPEN TO THE GENERAL PUBLIC, CONSTITUTIONAL PRINCIPALS, OF EQUAL PROTECTION AND DUE PROCESS REQUIRES, AS A MINIMUM, NOTIFICATION OF A VALID REASON TO EXCLUDE A PARTICULAR PERSON, AND AN OPPORTUNITY TO REFUTE THAT REASON BEFORE THAT PERSON MAY BE BANNED FROM COLLEGE GROUNDS.

POINT II THE STATE HAS FAILED TO SHOW THAT THE LETTER BANNING DEFENDANT FROM COLLEGE CAMPUS WAS ISSUED BY ONE WHO HAS THE POWER TO BAR NON-STUDENT MEMBER OF THE GENERAL PUBLIC FROM COLLEGE CAMPUS.

POINT III SINCE DEFENDANT WAS INITIALLY CHARGED WITH TRESPASSING BY BEING ON CAMPUS AFTER NOTICE BARRING HIM FROM SAID CAMPUS, AND SINCE THE COMPLAINANT WAS NOT LATER AMENDED A FINDING OF GUILT, ON THE TRESPASS CHARGE FOR HIS PRESENCE IN THE DEAN OF STUDENTS OFFICE IS INVALID, AS VIOLATIVE OF DEFENDANT'S DUE PROCESS RIGHTS TO BE NOTIFIED OF THE CHARGE AGAINST HIM.

POINT IV SINCE DEFENDANT WAS GIVEN NO VALID NOTICE, BANNING HIM FROM THE DEAN OF STUDENTS OFFICE, THE STATE HAS FAILED TO PROVE AN ELEMENT OF THE COMPLAINT THAT THE DEFENDANT TRESPASSED ON PROPERTY AFTER THE OCCUPANT FORBID ENTRY.

POINT V SINCE DEFENDANT WAS INITIALLY CHARGED WITH THE PURPOSE OF ANNOYING AND MOLESTING, A PERSON UNLAWFULLY, IN A PLACE AND SINCE STATUTE DOES NOT READ (PURPOSE), AND SINCE THE COMPLAINT WAS NOT LATER AMENDED, A FINDING OF GUILT ON THE OFFENSIVE LANGUAGE CHARGE IS INVALID AS VIOLATIVE OF DUE PROCESS RIGHT TO THE NOTIFIED OF THE CHARGE AGAINST HIM, AND THE COMPLAINT DOES NOT CONTAIN AND EMBRACE HIS ELEMENT OF THE OFFENSE, WHICH DEFENDANT WAS CHARGED WITH.

and in his pro se supplemental brief:

POINT VI HAS THE STATE VIOLATED DEFENDANT RIGHTS BY USE OF ILLEGAL EVIDENCE, NAMELY LETTER OF FEB 3, 1978, AND DEFENDANT ATTORNEY'S DID NOT MOVE TO SUPPRESS, THE EVIDENCE.

POINT VII THE STATE HAS STIPULATED AT A COURT OF LAW, AS TO WHAT PROCEDURES THE DEAN OF STUDENTS USED, WHEN HE, THE DEAN, BANNED DEFENDANT FROM THE CAMPUS OF OCEAN COUNTY COLLEGE.

We have carefully considered all of defendant's arguments addressed to these contentions and find, with the sole exception of the attack upon his conviction for using "offensive language" discussed in Point V, infra, that they are clearly without merit. R. 2:11-3(e)(2). Accordingly, defendant's conviction for trespassing upon the Ocean County College campus in violation of N.J.S.A. 2A:170-31 is affirmed.

However, there is merit in defendant's challenge to his conviction for using "offensive language" discussed in Point V, infra. The thrust of defendant's attack stated simply is that he was not charged with the offense for which he was convicted. The complaint charged defendant with a violation of N.J.S.A. 2A:170-29(2)(b) "in that he did come into the office of the Complainant (Dean Kerr) unannounced for the purpose of annoying and molesting a person lawfully therein." He was tried and found guilty in the municipal court of that offense. Notwithstanding the fact that he had not been charged with using "offensive language," the county court judge on a de novo review on the record below,

without amending the complaint, found him guilty of using "offensive language."

It is settled beyond dispute that a defendant may not be charged with one offense and tried and convicted of another. See State vs. Williamson, 54 N.J. Super. 170, 185-186 (App. Div. 1959), aff'd 31 N.J. 16 (1959); State vs. Wein, 162 N.J. Super. 159, 164 (App. Div. 1978), and State vs. Begyn, 58 N.J. Super. 185, 198 (App. Div. 1959), aff'd on other grounds 34 N.J. 35 (1961).

N.J.S.A. 2A:170-29, in pertinent part, provides:

> 1. Any person who utters loud and offensive or profane or indecent language in any public street or other public place, public conveyance, or place in which the public is invited; or
>
> 2. Any person who in any place, public or private,
>
> a. Addresses or makes audible and offensive remarks to or concerning any passing person; or
>
> b. Obstructs, molests or interferes with any person lawfully therein; or
>
> * * * * * * *
>
> Is a disorderly person.

The use of "offensive language" and molesting and interfering with a person proscribed by the fore-

going section of the Disorderly Persons Law are separate and distinct offenses. See State vs. Profaci, 56 N.J. 346, 353 (1970), which discusses the language of the "offensive language" under Subsection (1) and State vs. Lashinsky, 81 N.J. 1, 9 (1979) and State vs. Manning, 146 N.J. Super. 589, 593-594 (App. Div. 1977), which discusses the elements of molesting or interfering with a person under Subsection (2)(b). Here, it is perfectly obvious that defendant was charged with one offense and convicted of another.

We do not agree with the State's claim that the reference to "offensive language" was "obviously a shorthand way of describing the violation under N.J.S.A. 2A:170.29." A careful review of the county court transcript reveals that the county court judge and counsel for both the State and the defendant for some inexplicable reason were apparently under the impression that defendant was charged with using "offensive language" in violation of N.J.S.A. 2A:170-29(1). The following colloquy between the county court judge and defense counsel emphasizes the misunderstanding as to the nature of the charge:

> THE COURT: How about the question of offensive language which you haven't touched?
>
> MR. BUCZYNSKI: Your Honor, I believe the offensive language, the question comes to mind whether or not this was public or private. The door was opened. There were a number of people around who could hear it. After reading the case law, and I really could not find that the language itself was not offe aive to the people who were standing nereby.

At the conclusion of the argument, the county court judge found "(T)here is no question but on the basis of the testimony he certainly used pretty offensive language" and thereafter in imposing sentence prefaced his remarks stating, "(a)s to the offensive language, the fine of $50 and $15 is warranted." Finally, the judgment of conviction made specific reference to "offensive language." In these circumstances, we cannot conclude that defendant was properly convicted of molesting and interfering in violation of N.J.S.A. 2A:170-20(2)(b). Accordingly, defendant's conviction for using "offensive language," cannot stand and is reversed.

As modified, the judgment of conviction is affirmed. The matter is remanded to the Ocean County Court for the entry of an appropriate amendatory judgment. We do not retain jurisdiction.

Appendix 3

SUPREME COURT OF NEW JERSEY
C-422 SEPTEMBER TERM 1979

STATE OF NEW JERSEY, :

Plaintiff-Respondent :

v. : ON PETITION FOR CERTIFICATION

BERNARD LAUFGAS, :

Defendant-Petitioner :

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-1404-78 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 11th day of February, 1980.

/s/ Stephen W. Townsend
STEPHEN W. TOWNSEND, CLERK

Appendix 4

TOWNSHIP OF DOVER

Toms River, New Jersey 08753

November 7, 1979

Dover Township Municipal Court
255 Oak Avenue
Toms River, New Jersey 08753
(201) 341-1000

Mr. Bernard Laufgas
PO Box 98
113 Schooner Avenue
Barnegat, N.J. 08005

Dear Sir:

This is in answer to your request for a copy of the Judicial order or subponea requesting the release of documents from your file in connection with docket 2182N case heard in the Dover Township Municipal Court on April 19, 1978.

I have looked through the file and find no such order or subponea for anyone to bring the said papers you refer to above.

Very truly yours,

/s/ Clara Fisher

Court Clerk

CF/ja